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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 **Gary Lawrence**, an individual,
12 Plaintiff,
13 v.
14 **Credit One Bank, N.A.**,
15 Defendant.

16 Case No. '16CV0658 AJB RBB
17 **Complaint for Damages**
18 Jury Trial Demanded

19 1. Gary Lawrence ("Plaintiff"), brings this action for damages,
20 injunctive relief, and any other available legal or equitable remedies, resulting
21 from the unlawful and abusive attempts by Credit One Bank, N.A.
22 ("Defendant"), and its agents to collect a debt, causing Plaintiff damages.

23 2. For purposes of this Complaint, unless otherwise indicated,
24 "Defendant" includes all agents, employees, officers, members, directors, heirs,
25 successors, assigns, principals, trustees, sureties, subrogees, representatives and
26 insurers of Defendant named in this caption.

27 **Jurisdiction and Venue**

28 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47
U.S.C. § 227, and under 28 U.S.C § 1367 for pendant state law claims.

1 person to another person and which is or was incurred primarily for personal,
2 family, or household purposes.

3 10. Defendant alleges in its communications with Plaintiff that
4 Plaintiff is responsible for credit card debt that is due or owing. Upon
5 information and belief, Plaintiff alleges that this debt was incurred for personal,
6 family, or household purposes and therefore meets the definition of a consumer
7 debt under Cal. Civ. Code § 1788.2(f).

8 11. Defendant's various communications with Plaintiff discussed in this
9 Complaint all fall within the term "debt collection" as that term is defined by
10 Cal. Civ. Code § 1788.2(b).

11 12. Plaintiff is a subscriber to cellular telephone services for a telephone
12 number ending in 8860, where he received the calls from Defendant complained
13 of herein.

14 13. Defendant obtained Plaintiff's contact information, including the
15 8860 number, through means unknown to Plaintiff.

16 14. Beginning on April 16, 2015, Defendant initiated multiple
17 telephonic communications from various telephone numbers to Plaintiff's
18 cellular telephone number ending in 8860 using an automatic telephone dialing
19 system ("ATDS") as defined by 47 U.S.C. § 227(a)(1) and/or an artificial or
20 prerecorded voice, as prohibited by 47 U.S.C. § 227 (b)(1)(A).

21 15. This ATDS used by Defendant to call Plaintiff had the capacity to
22 store or produce telephone numbers to be called, using a random or sequential
23 number generator.

24 16. Each of these calls was an attempt to collect on a consumer debt
25 allegedly due and owing by Plaintiff.

26 17. The calls continued at least through November 24, 2015 and came
27 virtually every day and often more than once per day. From May 19, 2015
28 through November 24, 2015, not more than two consecutive days passed in this

1 period without at least one phone call from Defendant to Plaintiff's cellular
2 telephone number ending 8860.

3 18. For example, during the last eleven days of September 2015,
4 Plaintiff received a total of 155 phone calls from Defendant on his cellular
5 telephone number ending 8860, specifically —

- 6 • on September 20, 2015, Plaintiff received 14 phone calls
- 7 • on September 21, 2015, Plaintiff received 14 phone calls
- 8 • on September 22, 2015, Plaintiff received 12 phone calls
- 9 • on September 23, 2015, Plaintiff received 17 phone calls
- 10 • on September 24, 2015, Plaintiff received 15 phone calls
- 11 • on September 25, 2015, Plaintiff received 15 phone calls
- 12 • on September 26, 2015, Plaintiff received 15 phone calls
- 13 • on September 27, 2015, Plaintiff received 10 phone calls
- 14 • on September 28, 2015, Plaintiff received 16 phone calls
- 15 • on September 29, 2015, Plaintiff received 15 phone calls
- 16 • on September 30, 2015, Plaintiff received 12 phone calls

17 19. Plaintiff received at least one phone call every day in the month of
18 August, 2015; every day except one in the month of September, 2015; and every
19 day in the month of October, 2015.

20 20. Plaintiff received at least twenty phone calls on a single day
21 (November 5, 2015) which was then followed by another twenty calls the next day
22 (November 6, 2015). This was repeated the next week with nineteen calls on
23 November 9, twenty calls on November 10, twenty calls on November 11, twenty
24 calls on November 12, and twenty calls on November 13.

25 21. In total, Plaintiff received at least 1,493 calls from Defendant on his
26 cellular telephone number ending 8860 through November 24, 2015. A list of the
27 calls presently known to Plaintiff is set forth as Exhibit "A" to this Complaint
28 and is incorporated herein by reference.

1 22. None of the calls were made with Plaintiff's express consent.

2 23. Each of the calls were made by Defendant or a third party acting on
3 its behalf and under its control using telephone equipment that meets the
4 definition of an "automatic telephone dialing system" under the TCPA.

5 24. Plaintiff answered several of the above mentioned autodialed
6 telephone calls from Defendant to his cellular telephone number ending in 8860
7 and asked Defendant to stop calling. Despite this clear and unmistakable request,
8 the calls continued without interruption. Each of these requests terminated any
9 express or implied consent that Defendant may have had prior to beginning its
10 campaign of harassment by telephone.

11 25. At various times, Defendant programmed its telephone dialing
12 system to show as the incoming caller ID number telephone numbers in the 619,
13 858, and 760 area codes.

14 26. Upon information and belief, Plaintiff alleges that Defendant has no
15 call center in the 619, 858, or 760 area code and instead used false and
16 misleading caller ID information in a calculated effort to increase the rate at
17 which Plaintiff and other consumers would answer Defendant's collection calls.

18 27. Plaintiff on numerous occasions did answer Defendant's collection
19 calls when showing a 619, 858, or 760 caller ID area code, believing it to be a
20 friend or relative.

21 28. When Defendant began employing false and deceptive caller ID
22 information for its incoming calls, Defendant tricked Plaintiff into answering
23 many calls he did not intend to take, causing increased telephone charges.

24 29. Plaintiff also began to ignore or send to voice mail many incoming
25 calls from numbers he did not recognize, out of frustration in dealing with
26 Defendant's unwanted and intrusive calls. In doing so, he missed many
27 important communications from friends and family.
28

1 30. Plaintiff's cellular telephone number ending in 8860 was assigned to
2 a cellular telephone service for which Plaintiff incurred a charge for incoming
3 calls and texts pursuant to 47 U.S.C. § 227(b)(1).

4 31. These telephone communications constituted communications that
5 were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

6 32. Plaintiff did not provide prior express consent to receive calls or
7 messages on Plaintiff's cellular telephone utilizing an ATDS, pursuant to 47
8 U.S.C. § 227 (b)(1)(A).

9 33. These telephone communications by Defendant, or its agent, violated
10 47 U.S.C. § 227(b)(1).

11 34. Through this conduct of calling Plaintiff and causing a telephone to
12 ring or engaging any person in telephone conversation repeatedly or continuously
13 with intent to annoy, abuse or harass any person at the called number,
14 Defendant engaged in conduct the natural consequence of which is to harass,
15 oppress or abuse any person in connection with the collection of the debt, in
16 violation of 15 U.S.C. § 1692d(5), which is incorporated into the RFDCPA by
17 Cal. Civ. Code § 1788.17. Through this conduct, Defendant violated Cal. Civ.
18 Code § 1788.17.

19 35. Through this conduct of calling Plaintiff continuously after Plaintiff
20 informed Defendant numerous times that Plaintiff wished the calls to cease,
21 Defendant used false, deceptive, or misleading representations in connection with
22 the collection of any debt, in violation of 15 U.S.C. § 1692e, which is
23 incorporated into the RFDCPA by Cal. Civ. Code § 1788.17. Through this
24 conduct, Defendant violated Cal. Civ. Code § 1788.17.

25 36. Through this conduct of calling Plaintiff using deliberately false
26 caller ID area code information, Defendant used false, deceptive, or misleading
27 representations in connection with the collection of any debt, in violation of 15
28

1 U.S.C. § 1692e, which is incorporated into the RFDCPA by Cal. Civ. Code §
2 1788.17. Through this conduct, Defendant violated Cal. Civ. Code § 1788.17.

3 37. Each of the above-described practices and conduct outlined in the
4 preceding paragraphs also constitute unfair or unconscionable means to collect or
5 attempt to collect any debt in violation of 15 U.S.C. § 1692f, which is
6 incorporated into the RFDCPA by Cal. Civ. Code § 1788.17. Through this
7 conduct, Defendant violated Cal. Civ. Code § 1788.17.

8 38. Through this conduct of calling Plaintiff by means of an ATDS to a
9 telephone number assigned to cellular service without first obtaining Plaintiff's
10 express consent in order to collect on a consumer debt, Defendant used unfair or
11 unconscionable means to collect or attempt to collect any debt, in violation of 15
12 U.S.C. § 1692f, which is incorporated into the RFDCPA by Cal. Civ. Code §
13 1788.17. Through this conduct, Defendant violated Cal. Civ. Code § 1788.17.

14 39. Plaintiff felt frustrated and helpless as a result of the calls. The
15 unrelenting, repetitious calls disrupted Plaintiff's daily activities and peaceful
16 enjoyment of his personal and professional life.

17 40. The calls placed by Defendant to Plaintiff were extremely intrusive
18 into Plaintiff's personal life, including his relationships with close family
19 members.

20 41. Defendant is no stranger to TCPA litigation. On January 24, 2013, a
21 consumer filed a putative national class action against Defendant alleging
22 violations of the TCPA for making calls using an ATDS to call her cell phone.
23 *Foote v. Credit One Bank, N.A.*, Case No. 2:13-cv-512 (C.D.Cal.). This lawsuit was
24 resolved but during the time when Defendant was placing calls to Plaintiff
25 complained of here, it was facing at least three other national class actions for
26 similar TCPA claims. See, e.g., *Bridge v. Credit One Financial, d/b/a Credit One Bank,*
27 *N.A.*, Case No. 2:14-cv-1512 (D.Nev., filed Sept. 17, 2014); *Kristensen v. Credit One*
28

1 *Bank, N.A.*, Case No. 2:14-cv-7963 (C.D.Cal., filed Oct. 15, 2014); *A.D. v. Credit One*
2 *Bank, N.A.*, Case No. 1:14-cv-10106 (N.D.Ill., filed Dec. 17, 2014).

3 42. Despite knowing its obligations under state and federal law to
4 refrain from placing unconsent calls to consumers' cell phones, Defendant
5 nevertheless placed more than one thousand calls to Plaintiff's cell phone in
6 deliberate disregard of those duties and obligations.

7 **First Claim for Relief**

8 **Telephone Consumer Protection Act — 47 U.S.C. § 227(b)(1)**

9 43. Plaintiff incorporates by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.

11 44. Within a four-year period immediately preceding this action,
12 Defendant made more than 1,493 calls to Plaintiff's cellular telephone service
13 using an automatic telephone dialing system and/or an artificial or prerecorded
14 voice in violation of the TCPA.

15 45. As a direct and intended result of the above violations of the TCPA,
16 Defendant caused Plaintiff to sustain damages.

17 46. Defendant did not have prior express consent from Plaintiff to use
18 an ATDS or to employ an artificial or prerecorded voice to call the Plaintiff's
19 cellular telephone.

20 47. Under 47 U.S.C. § 227(b)(3)(B), Plaintiff is entitled to statutory
21 damages under the TCPA of not less than \$500.00 for each and every violation
22 pursuant to 47 U.S.C. § 227(b)(3)(B).

23 48. Defendant willfully and knowingly violated the TCPA, and as such
24 Plaintiff is entitled to as much as \$1,500.00 for each and every violation pursuant
25 to 47 U.S.C. § 227(b)(3)(C).

26 49. Plaintiff is entitled to injunctive relief prohibiting such conduct in
27 the future.

Second Claim for Relief

RFDCPA — Cal. Civil Code §§ 1788-1788.32

50. Plaintiff re-alleges and incorporates by reference the above paragraphs as though set forth fully herein.

51. The foregoing acts and omissions of Defendant constitutes numerous and multiple violations of the RFDCPA, including but not limited to each and every one of the above-cited provisions of Cal. Civ. Code §§ 1788-1788.32.

52. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant; and an award of remedies arising under 15 USC § 1692k of actual damages, statutory damages of \$1,000.00, costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code § 1788.17 from Defendant.

Third Claim for Relief

Negligence

53. Plaintiff re-alleges and incorporates by reference the above paragraphs as through set forth fully herein.

54. Plaintiff believes and thereon alleges that Defendant owed various duties to Plaintiff pursuant to the statutes described herein. Specifically, Defendant owed a duty to Plaintiff with regard to the manner of debt collection practices.

55. Defendant breached Defendant's respective duties by engaging in the acts described herein each in violation of the statutes alleged herein.

56. Plaintiff asserts that Defendant is both the actual and legal cause of Plaintiff's injuries.

1 57. Plaintiff believes and thereon alleges that as a proximate result of
2 Defendant's negligence, Plaintiff has suffered significant emotional distress.

3 58. Due to the egregious violations alleged herein, Plaintiff asserts that
4 Defendant breached Defendant's respective duties in an oppressive, malicious,
5 despicable, gross and wantonly negligent manner. As such, said conduct
6 Defendant's conscious disregard for Plaintiff's rights entitles Plaintiff to recover
7 punitive damages from Defendant.

8 **Fourth Claim for Relief**

9 **Invasion of Privacy**

10 59. Plaintiff re-alleges and incorporates by reference the above
11 paragraphs as through set forth fully herein.

12 60. Plaintiff had an objectively reasonable expectation of privacy at
13 home, at work, and when conducting his daily affairs, to expect that he would
14 not be subject to a dozen or more phone calls every day for months at a time.
15 Defendant's unrelenting campaign of harassment by placing more than a
16 thousand repeated phone calls intruded into this reasonable expectation of
17 privacy.

18 61. The frequency and cumulative volume of Defendant's phone calls
19 were received in a manner that would be highly offensive to a reasonable person
20 in the same or similar circumstances.

21 **Jury Trial Demand**

22 62. Plaintiff demands a jury trial on each of the causes of action set
23 forth above, including the amount of statutory damages.

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Prayers for Relief

Wherefore, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

1. An injunction against the calling of Plaintiff's cellular telephone by Defendant and its contractors, agents and employees;
2. Damages pursuant to 47 U.S.C. § 227(b)(3);
3. Damages pursuant to Cal. Civ. Code §§ 1788.17 and 1788.30;
4. General, special, and punitive damages according to proof;
5. Costs of litigation and reasonable attorneys' fees;
6. Such other and further relief as the Court may deem just and proper

Dated: March 16, 2016

Ankcorn Law Firm, PC

/s/ Mark Ankcorn

Attorneys for Plaintiff